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June 1, 2012

VIA ECF AND FIRST CLASS MAIL

Honorable Leonard D. Wexler
United States District Court
Eastern District of New York
944 Federal Plaza
Central Islip, New York 11722

Re: Baffo v. New York Institute of Technology, et. al.
Index No. 10-CV-1245 (LDW)(ETB)

Dear Judge Wexler:

We are counsel to defendants New York Institute of Technology, Robert Rizzuto, and Leonard Aubrey, in connection with the above-referenced action.

As Your Honor is aware, jury selection is to occur this Monday, June 4, 2012 at 11:00 a.m., with the trial to proceed of this action on a date subsequent to the conclusion of another action, which will be perhaps as early as June 6, 2012 (if the other matter settles) or June 12, 2012 if the other matter is not resolved. I will try the case for the defendants, and I am respectfully bringing to the Court's attention my current health status. I have, and have had, a herniated disc which disables me from standing for any period of time and from walking for more than several hundred feet. As a result, I am unable, and will be unable, to stand up for any period of time during the course of the trial, and while I had hoped during the last several weeks that this medical condition would not preclude me from trying the case my condition has worsened over the last several days, thereby causing me to respectfully bring this matter to the Court's attention. I am scheduled for surgery at the Hospital for Special Surgery on June 21, 2012, with Dr. Frank Camissa performing the surgery on that date. I am advised that the recuperation period is approximately six weeks, although after the surgery I have been told by Dr. Camissa, and his colleagues, that I will be encouraged to walk, so I do not anticipate that I will be unable to try the case in the succeeding months.

Yesterday I called counsel, Douglas Wigdor, Esq., and brought to his attention the fact that I would be unable to stand during the course of the trial. I explained to him that I would speak to our clients about this circumstance and he, too, advised me that he would speak to the plaintiff, Mr. Baffo. We then spoke later in the day and because I thought it would be prejudicial to my clients to conduct a trial without the ability to ambulate or to stand, I advised Mr. Wigdor that I would request from the Court a short adjournment of the trial, perhaps to the latter part of

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July or the early weeks of August. While I would request that Mr. Wigdor confirm his statement to me, I believe that I can represent that he said that he would not take a position with respect to this application.

I regret that I am bringing this matter to the attention of the Court at this late date, but it appears that if the parties proceed on June 12, 2012 that the trial will, or may, supersede the date of my surgery, and I am not aware of a date to which that surgery might be rescheduled. In fact, I had, most respectfully, intended to proceed to trial next week in the expectation, and hope, that I would be able to stand during the trial, but my condition has worsened and it is for that reason that I am bringing this matter to the Court's attention today, a mere three days before jury selection. I apologize to the Court for this belated application, but it has only been prompted by my mistaken belief that I would have been able to try the case next week.

Thank you for your consideration in this matter.

Respectfully submitted,



Douglas P. Catalano

cc: Douglas Wigdor, Esq. (via email)